

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 92-190-S - ORDER NO. 92-744 ✓
SEPTEMBER 3, 1992

IN RE: Edens-Woodberry Partners - 88,)	
)	
Complainant,)	ORDER DISMISSING
)	COMPLAINT AND
vs.)	ESTABLISHING
)	SINGLE FAMILY
Midlands Utility Company, Inc.)	EQUIVALENCY
and McGregor Downs Mobile Home)	RATING FOR
Park,)	WOODBERRY PLAZA
)	
Respondents.)	
)	

This matter is before the Public Service Commission of South Carolina (the Commission) on the Complaint filed by Edens-Woodberry Partners-88 (Edens) requesting the Commission resolve a dispute regarding the appropriate sewer tap fee and monthly usage charge it owes Midlands Utility, Inc. (Midlands). Edens asserts the appropriate tap fee and usage charge should be based on 10.9 single-family equivalences (SFEs); Midlands asserts the appropriate tap fee and usage charge should be based on 42.6 SFEs.¹ In addition, Edens asserts the Commission should require McGregor Downs Mobile Home Park (McGregor) to apply for and receive approval prior to abandoning service to Woodberry Plaza.

1. Edens asserts the appropriate tap fee is \$2,725; Midlands asserts the appropriate tap fee is \$10,650.

A hearing was held before the Commission on June 16, 1992. The Honorable Marjorie Amos-Frazier, Chairman, presided. Edens was represented by John F. Beach, Esquire; Midlands was represented by Jean Perrin-Derrick, Esquire; McGregor was represented by Darra Cothran, Esquire; and the Commission Staff was represented by Gayle B. Nichols, Staff Counsel. Based upon the testimony and exhibits presented at the hearing and the applicable law, the Commission makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Larry P. Hudson, Senior Vice President in charge of property management for Edens & Avant, Inc., testified on behalf of Edens. Edens testified that Woodberry Plaza, owned by Edens and managed by Edens & Avant, Inc., is a 41,000 square foot "strip" shopping center located in Lexington County, South Carolina. Mr. Hudson testified that Woodberry Plaza is currently leased by five commercial customers.² The record indicates that Woodberry Plaza has one vacant commercial unit.³

2. Mr. Hudson testified that during the mid to late 1970's, Woodberry Plaza began receiving waste treatment services from McGregor. Mr. Hudson testified that in the Spring of 1989 he learned that McGregor might eliminate its waste treatment plant and

2. These tenants are a grocery store, a video rental store, a pharmacy, a department store, and a laundromat. See Hearing Exhibit 2.

3. Over Midlands' objection Edens' moved to have the City of Cayce's Water and Sewer Ordinance entered into the record as Exhibit 1. The Commission concludes the ordinance is not relevant and, therefore, Midlands' objection should be sustained.

interconnect with a sewerage line constructed by Midlands. By letter dated July 18, 1991, Edens was notified by Midlands that it intended to acquire McGregor's system and intended to charge a interconnection fee of "\$250 for each single-family equivalent of flow from the Shopping Center." Mr. Hudson explained that by letter dated September 26, 1991, Midlands informed Edens that it intended to base its tap fee upon 44.09 SFEs at \$250 per SFE for a total tap fee of \$11,021.25.

3. Mr. Hudson stated that a tap fee of 44.09 SFEs which indicates that Woodberry Plaza has a sewerage flow equivalent to that of 44 single family homes was much higher than its sewage bills from McGregor. Mr. Hudson explained that Edens consulted the City of Cayce which computed a tap fee for Woodberry Plaza of 10.4 SFEs based upon Cayce's formula of one SFE per 4,000 square feet of space.⁴

4. Mr. Hudson testified that by letter dated October 1, 1991, Edens requested Midlands explain the basis for the 44.09 SFEs. By letter dated October 9, 1991, Midlands explained that its computation of 44.09 SFEs was based on the South Carolina Pollution Control Authority's Guidelines for Unit Contributory Loadings to

4. Pursuant to an arrangement between Midlands and Cayce, the sewerage of certain of Midlands' customers is treated by Cayce. Woodberry Plaza is one of Midlands' customers whose sewerage is collected by Midlands and treated by Cayce. Pursuant to the arrangement between Midlands and Cayce, this type of customer is required to pay Cayce for its use of Cayce's treatment capacity.

Wastewater Treatment facilities⁵ (Guidelines). Midlands also enclosed a portion of its tariff which defined SFE as "single-family equivalent as determined from DHEC Guidelines or flow data acceptable to utility." Hearing Exhibit 2.

5. Mr. Hudson stated that, based upon the statement from Midlands' July 18, 1991 letter that "Midlands will need the payment of \$250 for each single-family equivalent of flow from the shopping center," and the tariff language which defined SFE as "flow data acceptable to utility," Edens transmitted four months of actual water flow data to Midlands. Mr. Hudson testified that this data indicated actual flow of 4,700 gallons per day and that when divided by the DHEC standard of 400 gallons per day per SFE, the computed SFE was 11.78.

6. Mr. Hudson testified that, in response to the four months of flow data, Midlands requested flow measurements over a twelve (12) month period to reflect seasonal fluctuations in flow. On March 3, 1992, Edens provided twelve (12) months of flow data to Midlands. These measurements indicated an average flow of 4,367.7 gallons per day or 10.9 SFEs.

7. According to Mr. Hudson, by letter dated March 6, 1992, Midlands responded that twelve months of actual flow were unacceptable and that the calculation of the tap fee would be based upon the Guidelines. Hudson, pre-filed testimony, p. 7.

5. The South Carolina Department of Health and Environmental Control (DHEC)/Bureau of Water Pollution Control now produces the Guidelines.

8. Mr. Hudson testified that on March 15, 1992, Midlands notified Edens that Woodberry Plaza was interconnected with Midlands' collection lines.

9. Edens argues the Commission should require Midlands to calculate the number of SFES to be applied to Woodberry Plaza by using the twelve months of actual flow data it supplied to Midlands. Edens asserts flow measurements demonstrate the actual impact that Woodberry Plaza has on Midlands' system, that the flow measurements approximate the City of Cayce's estimate of Woodberry Plaza's impact upon Midlands' system, and that Midlands has agreed to apply the actual flow method to determine SFES.

10. On cross-examination, Mr. Hudson testified that Edens never refused nor represented that it would not pay a tap fee to Midlands. He also stated that Midlands never actually committed to basing a tap fee on actual flow but that "correspondence states they [Midlands] was willing to look at flow and to recognize a tap fee based on flow from the center."

11. William E. Booth, III, testified on behalf of Midlands. Mr. Booth explained that he was an attorney who represented Midlands during its negotiations with Edens concerning the appropriate tap fee and service charge. Mr. Booth testified that Edens repeatedly asked if Midlands would consider actual flow data and that he responded that Midlands would consider any material Edens wanted to call to Midlands' attention. Mr. Booth testified, however, that he never committed that Midlands would base a tap fee on the actual flow data.

12. Keith G. Parnell, an in-house engineer, also testified on behalf of Midlands. Mr. Parnell testified that Midlands never agreed to use Edens' flow data to establish a tap fee but instead informed Edens that the tap fee would be calculated under the Guidelines. Mr. Parnell testified that, under the Guidelines, Woodberry Plaza has the equivalent flow of 42.59 SFEs.⁶ He further testified that, pursuant to Order No. 92-84, Docket No. 90-528-S (February 28, 1992), Midlands' approved tap fee is \$250 per SFE.⁷

13. Mr. Parnell asserted the Guidelines rather than flow data should be used to calculate Midlands' tap fee and usage charge for the following reasons:

- A. The Guidelines are statistically valid minimum design loadings for various customers for wastewater treatment facilities.
- B. Midlands was required to meet the minimum design loadings of the Guidelines in the construction of its sewerage collection lines and treatment facilities.
- C. Unlike usage based on water flow data, the Guidelines take into consideration inflow infiltration into the system and are established to accommodate peak outflow.
- D. DHEC will impute usage under the Guidelines to determine whether Midlands' collection lines have the capacity to permit Midlands to tap on new customers. Although upon application, DHEC may approve the reduction in a utility's Unit Contributory Loading of a wastewater treatment facility, the Guidelines specify that "actual water use records from specific projects are not acceptable" documentation supporting such a

6. Mr. Parnell testified the calculation 44.09 SFEs was incorrect.

7. Mr. Parnell asserted Midlands waived the "gross up" charge permitted by Order No. 92-84.

reduction. Hearing Exhibit 3.

- E. In Order No. 91-447, Docket No. 90-528-S (June 7, 1991), the Commission denied Midlands' request to set its mobile home rate based on actual flow data and instead found it the better practice to rely on the DHEC Guidelines because actual flow data will vary on the basis of the residents living in the mobile home park.
- F. Midlands' approved tariff establishes a tap fee based on SFE rather than use of flow data. Order No. 92-84.

14. Mr. Parnell further explained that Edens' comparison between the actual plant expansion and modification fee charged it by the City of Cayce and Midlands' tap fee was inappropriate.⁸ Mr. Parnell stated that the City of Cayce bases its fee on an in-house formula of 1 SFE per 4,000 square feet, rather than on the Guidelines or actual flow data. Second, Mr. Parnell testified that, through negotiations, Cayce reduced its fee of \$875 per SFE to \$200 per SFE for Edens.⁹

CONCLUSIONS OF LAW

1. Midlands is a public utility which provides sewer service to the public for compensation. Consequently, Midlands' operations are subject to the jurisdiction of the Commission pursuant to S.C. Code Ann. §58-5-10, et. seq. (1976).

2. Midlands' present rates and charges were approved by

8. The City of Cayce originally charged Edens \$9,082 (\$875 x 10.38 SFEs).

9. Edens actually paid Cayce \$2200 (\$200 x 11 SFEs).

Order No. 92-84 (February 28, 1992).¹⁰ Pursuant to Order No. 92-84, Midlands is authorized to charge a tap fee of \$250 per SFE and a monthly commercial rate of \$21.04 per SFE.

3. The Commission concludes that the tap fee for Woodberry Plaza should be based on the Guidelines.

4. Based on the evidence presented at the hearing, the Commission is not convinced that Midlands agreed to base the Woodberry Plaza tap fee on the actual flow from the shopping center. While it is aware that Midlands' July 18, 1992 letter and language in the tariff enclosed in Midlands' October 9, 1991 letter can be construed to indicate that Midlands might base a tap fee on flow data, the Commission notes that Edens' witness Hudson testified that Midlands never committed to basing a tap fee on actual flow data but stated it would consider basing a tap fee on flow data.

5. Moreover, although it recognizes the considerable difference between basing the Woodberry Plaza tap fee on the Guidelines or on flow data, the Commission nonetheless concludes that establishing the tap fee based upon the Guidelines is appropriate. The Commission's regulations require SFEs to be computed with reference to the Guidelines. 26 S.C. Regs. 103-502.11 (Supp. 1991). Further, in prior instances where use of the Guidelines has not benefited the utility, the Commission has

10. Order No. 92-244 (April 10, 1992) addresses the plant expansion and modification fee for Midlands' customers whose sewage is treated by the City of Cayce.

required Midlands to base its monthly sewer charge on the Guidelines.¹¹

6. Further, the Commission concludes that the City of Cayce's SFE rating for Woodberry Plaza is not relevant to the establishment of Midland's SFE rating for the shopping center. Although both the City of Cayce and Midlands are required to construct their sewerage facilities in compliance with the design loading requirements of the Guidelines, in that Midlands is a regulated utility, unlike the City of Cayce, this Commission is under a duty to allow Midlands the opportunity to recover its prudently incurred capital investment in its facilities. Although the City of Cayce may choose to allocate its plant capacity among its customers by another method, the Commission finds that, for its purposes, the Guidelines provides an appropriate method to allocate a sewer utility's capital cost to the customers for whom the capacity was constructed.

7. Taking judicial notice of its records, the Commission finds that on January 16, 1992, Midlands submitted its proposed contract with McGregor to the Commission for approval. See, 26 S.C. Regs. 103-503 (1976). On January 29, 1992, the Commission approved the interconnection of McGregor's sewerage system with that of Midlands' facilities. Because the Commission has already approved the interconnection, Edens' request to require McGregor to

11. This Commission notes that this Order does not preclude basing a tap fee on flow data if an agreement is reached between a sewer utility and its customer.

apply for and receive approval to abandon its service is moot.

IT IS THEREFORE ORDERED:

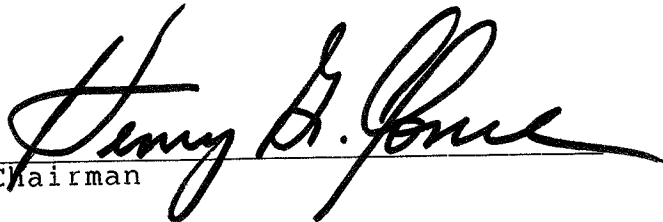
1. The sewer tap fee for Woodberry Plaza is hereby calculated as follows: $42.6 \text{ SFES} \times \$250 = \$10,650.00$. Edens shall pay this amount to Midlands within fifteen (15) days of receipt of this Order.

2. Similarly, the monthly usage charge payable by Edens for Woodberry Plaza shall be based on 42.6 SFES.

3. Edens' request to require McGregor to apply for and receive approval prior to abandoning service to Woodberry Plaza is denied.

4. This Order shall remain in full force and effect until further Order of the Commission.

IT IS SO ORDERED.


Chairman

ATTEST:


Executive Director

(SEAL)